ment, had been read, his counsel applied to the court for leave to amend his return, which leave was refused. The present suggestion is made under the belief of the member of the bar who makes it, that this report was erroneous, and that what occurred was as follows. When the opinion in the original proceeding was read, the counsel of Mr. Williamson asked if a motion to amend the return would be received, and the court replied, that the motion must be reduced to writing, and that it could not be received until the court's order should be filed with the Clerk and recorded; adding that the court would then receive any motion which the counsel for Mr. Williamson might desire to make. The court's order was then filed by the Clerk, and entered on record; but no motion to amend was then or afterwards made, although the court paused to give an opportunity for making it, and invited the counsel then or afterwards, to make any motion which their client might be advised to make."

Judge Kane said:—The recollections of Mr. Cadwalader concur substantially with my own. There certainly was no motion made by the counsel of Mr. Williamson, for leave to amend his return. A wish was expressed to make such a motion, and the judge asked that the motion might be reduced to writing and filed. But the motion was not drawn out or presented for the court's consideration, and the court never expressed any purpose to overrule such a motion, if one should be presented.

Supreme Court of Pennsylvania,—August, 1855.

EX PARTE PASSMORE WILLIAMSON.[1]

1. A writ of habeas corpus will not be allowed in the first instance, where it appears on the face of the petition that the relator must be remanded at the hearing.
2. The legality of a commitment for contempt by one court, cannot be inquired into by another court, especially one of a different sovereignty (as is the case between the federal and state courts,) on habeas corpus or otherwise.
3. Nor is it material in such case that there was a want of jurisdiction over the original proceeding, in the course of which the commitment for contempt was made. KNOX, J., dissenting.

This was a renewed application to the court in banc, for a writ of habeas corpus in the case of Passmore Williamson, after its refusal

[1] Before LEWIS, C. J., BLACK, WOODWARD, LOWRIE, and KNOX, JJ.

by Chief Justice Lewis, at chambers. See ante, vol. iii, p. 741. The state of facts on which the decision was based, was the same.

BLACK, J.—This is an application by Passmore Williamson for a habeas corpus. He complains that he is held in custody under a commitment of the District Court of the United States for a contempt of that court in refusing to obey its process. The process which he is confined for disobeying, was a habeas corpus, commanding him to produce the bodies of certain colored persons claimed as slaves under the law of Virginia.

Is he entitled to the writ he has asked for? In considering what answer we shall give to this question, we are, of course, expected to be influenced, as in other cases, by the law and the Constitution alone. The gentlemen who appeared as counsel for the petitioner, and who argued the motion in a way which did them great honor, pressed upon us no considerations except those which were founded upon their *legal* views of the subject.

It is argued with much earnestness, and, no doubt, with perfect sincerity, that we are bound to allow the writ, without stopping to consider whether the petitioner has or has not laid before us any probable cause for supposing that he is illegally detained—that every man confined in prison, except for treason or felony, is entitled to it *ex debito justitiæ*—and that we cannot refuse it without a frightful violation of the petitioner's rights, no matter how plainly it may appear, on his own showing, that he is held ln custody for a just cause. If this be true, the case of *ex parte Lawrence* (5 Binn. 304) is not law. There the writ was refused, because the applicant had been previously heard before another court. But if every man who applies for a habeas corpus must have it, as a matter of right, and without regard to anything but the mere fact that he demands it, then a court or judge has no more power to refuse a second than a first application.

Is it really true that the special application, which must be made for every writ of habeas corpus, and the examination of the commitment, which we are bound to make before it can issue, are mere hollow and unsubstantial forms? Can it be possible that the law and the courts are so completely under the control of their natural ene-

mies, that every class of offenders against the Union, or the State, except traitors and felons, may be brought before us as often as they please, though we know beforehand by their own admissions, that we cannot help but remand them immediately? If these questions must be answered in the affirmative, then we are compelled, against our will and contrary to our convictions of duty, to wage a constant warfare against the federal tribunals by firing off writs of habeas corpus upon them all the time. The punitive justice of the State would suffer still more seriously. The half of the Western Penitentiary would be before us at Philadelphia, and a similar proportion from Cherry Hill and Moyamensing would attend our sittings at Pittsburg. To remand them would do very little good, for a new set of writs would bring them all back again. A sentence to solitary confinement would be a sentence that the convict should travel for a limited term up and down the State in company with the officers who might have him in charge. By the same means the inmates of the lunatic asylums might be temporarily enlarged, much to their own detriment; and every soldier or seaman in the service of the country could compel their commanders to bring them before the court six times a week.

But the habeas corpus act has never received such a construction. It is a writ of right and may not be refused to one who shows a *prima facie* case, entitling him to be discharged or bailed. But he has no right to demand it, who admits that he is in legal custody for an offence not bailable; and he does make what is equivalent to such an admission, when his own application and the commitment referred to in it, show that he is lawfully detained. A complaint must be made, and the cause of detainer submitted to the court or a judge, before the writ can go. The very object and purpose of this is to prevent it from being trifled with by those who have manifestly no right to be set at liberty. It is like a writ of error in a criminal case, which the court or judge is bound to allow, if there be reason to suppose that an error has been committed, and equally bound to refuse, if it be clear that the judgment must be affirmed.

We are not aware that any application to this court for a writ of

habeas corpus has ever been successful, where the judges at the time of the allowance, were satisfied that the prisoner must be remanded. The petitioner's counsel say that there is but one reported case in which it was refused (5 Binn. 304); and this is urged in the argument as a reason for supposing, that in all other cases, the writ was issued without examination. But no such inference can be fairly drawn from the scarcity of judicial decisions on a point like this. We do not expect to find in reports so recent as ours, those long established rules of law which the student learns from his elementary books, and which are constantly acted upon without being disputed.

The habeas corpus is a common law writ, and has been used in England from time immemorial, just as it is now. The statute of 31 Car. II, c. 2, made no alteration in the practice of the courts in granting these writs. (3 Barn. & Ald. 420–2; Chitty, 207.) It merely provided that the judges in vacation should have the power which the courts had previously exercised in term time (1 Chitty's Gen. Prac., 686), and inflicted penalties upon those who should defeat its operation. The common law upon this subject was brought to America by the colonists; and most, if not all of the states, have since enacted laws resembling the English statute of Charles II, in every principal feature. The Constitution of the United States declares, that "the privilege of a writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." Congress has conferred upon the federal judges the power to issue such writs according to the principles and rules regulating them in other courts. Seeing that the same general principles of common law on this subject prevail in England and America, and seeing also the similarity of the statutory regulations in both countries, the decisions of the English judges as well as of the American courts, both state and federal, are entitled to our fullest respect as settling and defining our powers and duties. Blackstone (3 Com. 132) says the writ of habeas corpus should be allowed only when the court or judge is satisfied that the party hath probable cause to be delivered. He gives cogent reasons why it should not be allowed in any other case, and cites with unquali-

fied approbation the precedent set by Sir Edward Coke and Chief Justice Vaughan, in cases where they had refused it. Chitty lays down the same rule. (1 Cr. Law, 101; 1 Gen'l Prac. 686–7.) It seems to have been acted upon by all the judges. The writ was refused in *Rex* vs. *Scheiver* (1 Bur. 765), and in the case of the *Three Spanish Sailors*, (2 Black, 1324).

In *Hobhouse's case* (3 Barn. & Ald. 420), it was fully settled by a unanimous court, as the true construction of the statute, that the writ is never to be allowed, if, upon view of the commitment, it be manifest that the prisoner must be remanded. In New York, when the statute in force there was precisely like ours, (so far I mean, as this question is concerned,) but was decided by the Supreme Court (5 Johns. 282), that the allowance of the writ was a matter within the discretion of the court, depending on the grounds laid in the application. It was refused in *Husted's case* (1 Johns. 136); and in *Ex parte Ferguson* (9 Johns. 139). In addition to this we have the opinion of Chief Justice Marshall in *Watkins' case* (3 Peters, 202), that the writ ought not to be awarded if the court is satisfied that the prisoner must be remanded. It was accordingly refused by the Supreme Court of the United States in that case, as it had been before in *Kearney's case.*

On the whole we are thoroughly satisfied that our duty requires us to view, and examine the cause of detainer *now* and to make an end of the business at once, if it appear that we have no power to discharge him on the return of the writ.

This prisoner, as already said, is confined on a sentence of the District Court of the United States for a contempt. A habeas corpus is not a writ of error. It cannot bring a case before us in such a manner that we can exerise any kind of appellate jurisdiction in it. On a habeas corpus, the judgment even of a subordinate State court cannot be disregarded, reversed, or set aside, however clearly we may perceive it to be erroneous, and however plain it may be that we ought to reverse it if it were before us on appeal or writ of error. We can only look at the record to see whether a judgment exists, and have no power to say whether it is right or wrong. It is conclusively presumed to be right until it be regularly brought up for revision.

We decided this three years ago at Sunbury, in a case which we all thought one of much hardship. But the rule is so familiar, so universally acknowledged, and so reasonable in itself, that it requires only to be stated. It applies with still greater force, or at least for much stronger reasons, to the decisions of the federal courts. Over them we have no control at all, under any circumstances, or by any process that could be devised. Those tribunals belong to a different judicial system from ours. They administer a different code of laws, and are responsible to a different sovereignty. The District Court of the United States is as independent of us as we are of it—as independent as the Supreme Court of the United States is of either. What the law and the Constitution have forbidden us to do directly on writ of error, we, of course, cannot do indirectly by habeas corpus.

But the petitioner's counsel have put his case on the ground that the whole proceeding against him in the District Court, was *coram non judice*, null and void. It is certainly true that a void judgment may be regarded as no judgment at all; and every judgment is void, which clearly appears on its own face to have been pronounced by a court having no jurisdiction or authority in the subject matter. For instance, if a federal court should convict and sentence a citizen for libel; or if a state court, having no jurisdiction except in civil pleas, should try an indictment for a crime and convict the party:—in these cases the judgments would be wholly void. If the petitioner can bring himself within this principle, then there is no judgment against him; he is wrongfully imprisoned, and we must order him to be brought out and discharged.

What is he detained for? The answer is easy and simple. The commitment shows that he was tried, found guilty, and sentenced for *contempt of court*, and nothing else. He is now confined *in execution of that sentence*, and for no other cause. This was a distinct and substantive offence against the authority and government of the United States. Does any body doubt the jurisdiction of the District Court to punish the contempt of one who disobeys its process? Certainly not. All courts have this power and must neces-

sarily have it. Without it they would be utterly powerless. The authority to deal with an offender of this class belongs exclusively to the court in which the offence is committed, and no other court, not even the highest, can interfere with its exercise, either by writ of error, mandamus, or habeas corpus. If the power be abused, there is no remedy but impeachment. The law was so held by this court in *McLaughlin's case* (5 W. & S., 275), and by the Supreme Court of the United States, in *Kearney's case* (7 Wheaton, 38). It was solemnly settled as part of the common law, in *Brass Crosby's case* (3 Wilson, 183), by a court in which sat two of the foremost jurists that England ever produced. We have not the smallest doubt that it is the law; and we must administer it as we find it. The only attempt ever made to disregard it was by a New York judge (4 Johns. 345), who was not supported by his brethren. This attempt was followed by all the evil and confusion which Blackstone, and Kent, and Story declared to be its necessary consequences. Whoever will trace that singular controversy to its termination will see that the chancellor and the majority of the Supreme Court, though once outvoted in the Senate, were never answered. The Senate itself yielded to the force of the truths which the Supreme Court had laid down so clearly, and the judgment of the Court of Errors in *Yates' case* (6 Johns. 503), was overruled by the same court, the year afterwards, in *Yates* vs. *Lansing* (9 Johns. 423,) which grew out of the very same transaction, and depended on the same principles. Still further reflection, at a later period, induced the Senate to join the popular branch of the Legislature in passing a statute which effectually prevents one judge from interfering, by habeas corpus, with the judgment of another on a question of contempt.

These principles being settled, it follows irresistibly, that the District Court of the United States had power and jurisdiction to decide what acts constitute a contempt against it; to determine whether the petitioner had been guilty of contempt, and to inflict upon him the punishment, which, in its opinion, he ought to suffer. If we fully believed the petitioner to be innocent—if we were sure that the court which convicted him misunderstood the facts, or mis-

applied the law—still we could not re-examine the evidence, or rejudge the justice of the case, without grossly disregarding what we know to be the law of the land. The judge of the district court decided the question on his own constitutional responsibility. Even if he could be shown to have acted tyrannically or corruptly, he could be called to answer for it only in the Senate of the United States.

But the counsel of the petitioner goes behind the proceeding in which he was convicted, and argues that the sentence for contempt is void, because the court had no jurisdiction of a certain other matter which it was investigating, or attempting to investigate, when the contempt was committed. We find a judgment against him in one case; and he complains about another, in which there is no judgment. He is suffering for an offence against the United States; and he says he is innocent of any wrong to a particular individual. He is conclusively adjudged guilty of contempt; and he tells us that the court had no jurisdiction to restore Mr. Wheeler's slaves.

It must be remembered that contempt of court is a specific criminal offence. It is punished sometimes by indictment, and sometimes in a summary proceeding, as it was in this case. In either mode of trial, the adjudication against the offender is a conviction, and the commitment in consequence is execution. (7 Wheat. 38.) This is well settled, and, I believe, has never been doubted. Certainly the learned counsel for the petitioner has not denied it. The contempt may be connected with some particular cause, or it may consist in misbehaviour, which has a tendency to obstruct the administration of justice generally. When it is committed in a pending cause, the proceeding to punish it is a proceeding by itself. It is not entitled in the cause pending, but on the criminal side. (Wall, 134.) The record of a conviction for contempt is as distinct from the matter under investigation when it was committed, as an indictment for perjury is from the cause in which the false oath was taken. Can a person convicted of perjury, ask us to deliver him from the penitentiary, on showing that the oath on which the perjury is as-

signed, was taken in a cause of which the court had no jurisdiction? Would any judge in the commonwealth listen to such reasons for treating the sentence as void? If instead of swearing falsely, he refuses to be sworn at all, and he is convicted not of perjury, but of contempt, the same rule applies, and with a force precisely equal. If it be really true that no contempt can be committed against a court while it is inquiring into a matter beyond its jurisdiction, and if the fact was so in this case, then the petitioner had a good defence, and he ought to have made it on his trial. To make it after conviction is too late. To make it here is to produce it before the wrong tribunal.

Every judgment *must* be conclusive until reversed. Such is the character, nature, and essence of all judgments. If it be not conclusive it is not a judgment. A court must either have power to settle a given question finally and forever, so as to preclude all further inquiry upon it, or else it has no power to make any decision at all. To say that a court may determine a matter, and that another court may regard the same matter afterwards as open and undetermined, is an absurdity in terms.

It is most especially necessary that convictions for contempt in one court should be final, conclusive, and free from re-examination by other courts on habeas corpus. If the law were not so, our judicial system would break to pieces in a month. Courts totally unconnected with each other would be coming into constant collision. The inferior courts would revise all the decisions of the judges placed over and above them. A party unwilling to be tried in this court need only defy our authority, and if we commit him, take out his habeas corpus before a judge of the Common Pleas, and if that judge be of opinion that we ought not to try him, there is an end of the case.

This doctrine is so plainly against reason that it would be wonderful indeed, if any authority for it could be found in the books. There is none, except the overruled decision of Mr. Justice Spencer, of New York, and some efforts of the same kind to control the other courts, made by Sir Edward Coke, in the King's Bench, which are now universally admitted to have been illegal, as

well as rude and intemperate. On the other hand, we have all the English judges, and all our own, disclaiming the power to interfere with, or control, one another in this way. I will content myself by simply referring to some of the books in which it is established that the conviction for contempt is a separate proceeding, and is conclusive of every fact which might have been urged on the trial for contempt, and among others want of jurisdiction to try the cause in which the contempt was committed. (4 Johns. 325, et sequ. The opinion of Ch. J. Kent, on pages 370 to 375; 6 Johns. 563; 9 Johns. 423; 1 Hill, 160; 5 Iredell, 199; ib. 153; 2 Sandf. 724; 1 Carter, 160; 1 Blackf. 166; 25 Miss. 880; 2 Wheeler's Criminal Cases, 1; 14 Ad. & Ellis, N. S., 558.) These cases will speak for themselves, but I may remark as to the last one, that the very same objection was made there as here. The party was convicted of contempt in not obeying a decree. He claimed his discharge on habeas corpus, because the chancellor had no jurisdiction to make the decree, being interested in the cause himself. But the Court of Queen's Bench held that if this was a defence, it should have been made on the trial for contempt, and the conviction was conclusive. We cannot choose but hold the same rule here. Any other would be a violation of the law which is established and sustained by all authority and all reason.

But certainly the want of jurisdiction alleged in this case would not even have been a defence on the trial. The proposition that a court is powerless to punish for disorderly conduct and disobedience of its process in a case which it ought ultimately to dismiss for want of jurisdiction, is not only unsupported by judicial authority, but we think it is new even as an argument at the bar. We ourselves have heard many cases through and through before we became convinced that it was our duty to remit the parties to another tribunal. But we never thought that our process could be defied in such cases more than in others.

There are some proceedings in which the want of jurisdiction would be seen at the first blush; but there are others in which the court must inquire into all the facts before it can possibly know whether it has jurisdiction or not. Any one who obstructs or baffles

a judicial investigation for that purpose, is unquestionably guilty of a crime, for which he may and ought to be tried, convicted and punished. Suppose a local action to be brought in the wrong county, this is a defence to the action, but a defence which must be made out like any other. While it is pending, neither a party, nor an officer, nor any other person, can safely insult the court or resist its order. The court may not have power to decide upon the merits of the case; but it has undoubted power to try whether the wrong was done within its jurisdiction or not. Suppose Mr. Williamson to be called before the Circuit Court of the United States as a witness in a trial for murder, alleged to be committed on the high seas; can he refuse to be sworn, and, at his trial for contempt, justify himself on the ground that the murder was in fact committed within the limits of a state, and therefore triable only in a state court? If he can, he can justify perjury for the same reason. But such a defence for either crime has never been heard of since the beginning of the world. Much less can it be shown, after conviction, as a ground for declaring the sentence void.

The writ which the petitioner is convicted of disobeying, was legal on its face. It enjoined upon him a simple duty, which he ought to have understood and performed without hesitation. That he did not do so is a fact conclusively established by the adjudication which the court made upon it. I say the writ was legal, because the Act of Congress gives to all the courts of the United States, the power "to issue writs of habeas corpus when necessary for the exercise of their jurisdiction, and agreeable to the principles and usages of law." Chief Justice Marshall decided, in *Burr's trial*, that the principles and usages referred to in this act were those of the common law. A part of the jurisdiction of the District Court consists in restoring fugitive slaves; and the habeas corpus may be used in aid of it when necessary. It was awarded here upon the application of a person who complained that his slaves were detained from him. Unless they were fugitive slaves, they could not be slaves at all, according to the petitioner's own doctrine, and if the judge took that view of the subject he was bound to award the writ.

If the persons mentioned in it had turned out to be fugitives from labor, the duty of the District Judge to restore them, or his power to bring them before him on a habeas corpus, would have been disputed by none except the very few who think that the Constitution and the law on that subject ought not to be obeyed. The duty of the Court to inquire into the facts on which its jurisdiction depends is as plain as its duty not to exceed it when it is ascertained.

But Mr. Williamson stopped the investigation *in limine;* and the consequence is that every thing in the case remains unsettled—whether the persons named in the writ were slaves or free—whether Mr. Wheeler was the owner of them—whether they were unlawfully taken from him—whether the court had jurisdiction to restore them—all these points are left open for want of a proper return. It is not our business to say how they ought to be decided; but we do not doubt that the learned and upright magistrate who presided in the District Court would have decided them as rightly as any judge in all the country. Mr. Williamson had no right to arrest the inquiry because he supposed that an error would be committed on the question of jurisdiction, or any other question. If the assertions which his counsel now make on the law and the facts be correct, he prevented an adjudication in favor of his protogees, and thus did them wrong, which is probably a greater offence in his own eyes than anything he could do against Mr. Wheeler's rights. There is no reason to believe that any trouble whatever would have come out of the case if he had made a true, full, and special return of all the facts; for then the rights of all parties, black and white, could have been settled, or the matter dismissed for want of jurisdiction, if the law so required.

It is argued that the court had no jurisdiction, because it was not averred that the slaves were fugitives, but merely that they owed service by the laws of Virginia. Conceding, for the argument's sake, that this was the only ground on which the court could have interfered—conceding, also, that it is not substantially alleged in the petition of Mr. Wheeler—the proceeding was nevertheless, not void for that reason. The federal tribunals, though courts of limited jurisdiction, are not *inferior* courts. Their judgments, until

reversed by the proper appellate court, are valid and conclusive upon the parties, though the jurisdiction be not alleged in the pleadings nor on any part of the record. (10 Wheaton, 192.) Even if this were not settled and clear law, it would still be certain, that the fact on which jurisdiction depends, need not be stated *in the process*. The want of such a statement in the body of the habeas corpus, or in the petition on which it was awarded, did not give Mr. Williamson a right to treat it with contempt. If it did, then the courts of the United States must set out the ground of their jurisdiction in every subpœna for a witness; and a defective or untrue averment will authorize the witness to be as contumacious as he sees fit.

But all that was said in the argument about the petition, the writ, and the facts which were proved, or could be proved, refer to the *evidence* in which the conviction took place. This has passed in *rem judicatam*. We cannot go one step behind the conviction itself. We could not reverse it if there had been no evidence at all. We have no more authority in law to come between the prisoner and the court to free him from a sentence like this, than we would have to countermand an order issued by the commander-in-chief to the United States army. We have no authority or jurisdiction to decide anything here, except the simple fact that the District Court has power to punish for contempt, a person who disobeys its process—that the petitioner is convicted of such contempt—and that the conviction is conclusive upon us. The jurisdiction of the court in the case which had been before it, and everything else which preceded the conviction, are out of our reach; they are not examinable by us, and, of course, not now intended to be decided.

There may be cases in which we ought to check usurpation of power by the federal courts. If one of them would presume, upon any pretence whatever, to take out of our hands a prisoner convicted of contempt in this court, we would resist it by all proper and legal means. What we would not permit them to do against us, we will not do so against them. We must maintain the rights of the State and its courts, for to them alone can the people look for a competent administration of their domestic concerns; but we will

do nothing to impair the constitutional vigor of the general government, which is "the sheet anchor of our peace at home and our safety abroad."

Some complaint was made in the argument about the sentence being for an indefinite time. If this were erroneous, it would not avail here; since we have as little power to revise the judgment for that reason as for any other. But it is not illegal, nor contrary to the usual rule in such cases. It means commitment until the party shall make proper submission. (3 Lord Raymond 1103; 4 Johns. 375.) The law will not bargain with anybody to let its courts be defied for a specified term of imprisonment. There are many persons who would gladly purchase the honors of martyrdom in a popular cause at almost any given price, while others are deterred by a mere show of punishment. Each is detained until he finds himself willing to conform. This is merciful to the submissive and not too severe upon the refractory. The petitioner, therefore, carries the key of his prison in his own pocket. He can come out when he will, by making terms with the court that sent him there. But if he choose to struggle for a triumph—if nothing will content him but a clean victory or a clean defeat—he cannot expect us to aid him. Our duties are of a widely different kind. They consist in discouraging, as much as in us lies, all such contests with the legal authorities of the country. *The writ of habeas corpus is refused.*

KNOX J., dissented, and delivered an opinion, in which he announced the following propositions, as a summary of his argument:—

1st. That at common law, and by the Pennsylvania statute of 1785, the writ of habeas corpus, *ad subjiciendum* is a writ of right, demandable whenever a petition, in due form, asserts what, if true, would entitle the party to relief.

2d. That an allegation, in a petition, that the petitioner is restrained of his liberty by an order of a judge or court without jurisdiction, shows such probable cause as to leave it no longer discretionary with the court or judge to whom application is made, whether the writ shall or shall not issue.

3d. That where a person is imprisoned by an order of a judge of the District Court of the United States for refusing to answer a writ of habeas corpus, he is entitled to be discharged from such imprisonment if the judge of the District Court had no authority to issue the writ.

4th. That the power to issue writs of habeas corpus by the judges of the federal courts is a mere auxiliary power, and that no such writ can be issued by such judges where the cause of complaint intended to be remedied by it is beyond their jurisdiction.

5th. That the courts of the federal government are courts of limited jurisdiction, derived from the Constitution of the United States and the acts of Congress under the Constitution, and that where the jurisdiction is not given by the Constitution or by Congress in pursuance of the Constitution, it does not exist.

6th. That where it does not appear by the record that the court had jurisdiction in a proceeding under the habeas corpus act to relieve from an illegal imprisonment, want of jurisdiction may be established by parol.

7th. That where the inquiry as to the jurisdiction of a court arises upon a rule for a habeas corpus, all the facts set forth in the petition tending to show want of jurisdiction are to be considered as true, unless they contradict the record.

8th. That where the owner of a slave voluntarily brings his slave from a slave to a free State, without any intention of remaining therein, the right of the slave to his freedom depends upon the law of the State into which he is thus brought.

9th. That if a slave so brought into a free State escapes from the custody of his master while in said State, the right of the master to reclaim him is not a question arising under the Constitution of the United States or the laws thereof, and therefore, a judge of the United States cannot issue a writ of habeas corpus directed to one who it is alleged, withholds the possession of the slave from the master, commanding him to produce the body of the slave before said judge.

10th. That the District Court of the United States for the Eastern District of Pennsylvania has no jurisdiction, because a contro-

versy is between citizens of different States, and that a proceeding by habeas corpus is in no legal sense, a controversy between private parties.

11th. That the power of the several courts of the United States to inflict summary punishment for contempt of court in disobeying a writ of the court is expressly confined to cases of disobedience to lawful writs.

12th. That where it appears from the record that the conviction was for disobeying a writ of habeas corpus, which writ the court had no jurisdiction to issue, the conviction is *coram non judice* and void.[1]

Supreme Judicial Court of Massachusetts.—October Term, 1854.

CYNTHIA A. GREENE *vs.* ANDREW B. GREENE.[2]

A decree of divorce from the bonds of matrimony, although obtained by fraud, cannot be set aside on an original libel, filed at a subsequent term.

Libel for a divorce from the bonds of matrimony for five years' desertion of the libellant by the respondent. The libel also set forth, that the respondent, at the last November term of this court, by false testimony, fraudulently procured a divorce from the libellant for the alleged cause of adultery. "Wherefore, in addition to the prayer, which she now submits to this honorable court, to be divorced from said Andrew as the law provides, she prays that this honorable court will bear evidence of the fraud and collusion by means of which said libel of divorce of said Andrew was by him prosecuted, and the decree of divorce by him obtained against her, and that the same may be reversed, annulled and set aside, and all

[1] After the decision of the court in this case, Chief Justice Lewis, stated that each of the judges, who had concurred therein, would take a future opportunity of giving their reasons for the course which they had pursued. These opinions, as well as that of Judge Knox, which we are obliged to omit in the present number, for want of space, we hope to publish hereafter.

[2] To be published in 2 Gray's Reports.